

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

RAFAEL HERRERA-WELKER,

Plaintiff,

v.

STATE OF OREGON; OREGON
DEPARTMENT OF
CORRECTIONS; K. WHITE; CYNTHIA
DIETER; GARTH GULICK; PATRICK
MANEY; L. GRUENWALD; DAVID
GORDANIER; C. CAMPOS; HAILEY
COLEMAN; JAMES KEMPAS; TINA
HAZEN; ROBERT HOLDEN; ANTONIO
FERNANDEZ; CANDA ZIMMERLY;
WARREN ROBERTS and JOHN AND
JANE DOES,

Defendant.

Case No. 1:22-cv-00401-CL

ORDER

MCSHANE, Judge:

Magistrate Judge Mark D. Clarke filed a Findings and Recommendation (ECF No. 25), and the matter is now before this Court.s *See* 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). I review *de novo*. *United States v. Bernhardt*, 840 F.2d 1441, 1445 (9th Cir. 1998). I find no error and conclude the report is correct.

Magistrate Judge Clarke's Findings and Recommendation (ECF No. 24) is adopted in full. The Motion to Dismiss for Failure to State a Claim is granted. Plaintiff's first, second, and third claims for relief are dismissed. Plaintiff's claims against the State of Oregon, ODOC, and all individual Defendants in their official capacity are dismissed with prejudice. Plaintiff's claims against Defendants Campos-Hernandez, Coleman, and Gordanier are dismissed with prejudice. Claims against Defendant Gulick in his individual capacity are dismissed without prejudice and with leave to amend. Plaintiff has thirty (30) days to file a Second Amended Complaint. IT IS SO ORDERED.

DATED this 28th day of February, 2024.

s/Michael J. McShane
Michael McShane
United States District Judge